

THE THARAKA NITHI COUNTY TEA BILL, 2019

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THARAKA NITHI COUNTY TEA BILL, 2019

A Bill for

AN ACT of the County Assembly of Tharaka Nithi to provide for growing of tea; introduction, usage and management of tea cess and regulation of the tea industry and for other connected purposes.

ENACTED by the County Assembly of Tharaka Nithi as follows —

PART I — PRELIMINARY

Short title

1. This Act may be cited as the Tharaka Nithi County Tea Act, 2019.

Interpretation

2. In this Act, unless the context otherwise requires—

“blending” means the process of mixing tea of different grades to affect the flavor and characteristics of the tea for the purpose of packing and for sale;

“buyer” means a person, a company or a firm engaged in acquiring manufactured tea for re-sale in the local or export market, including the export of imported tea;

“board of directors” means the directors of the tea factory company;

“broker” means a person, company or firm established for the purpose of negotiating the purchase or sale of tea between producers and buyers;

“Committee” means the committees established under this Act;

“County” means the Tharaka Nithi County;

“ County Executive Member” means the Tharaka Nithi County Executive Committee Member for the time being responsible for agriculture;

“County Executive Committee” means a County

Executive Committee established in accordance with Article 176 of the Constitution;

“county public officer” means a county public officer within the meaning of Section 2 of the County Government Act,2012;

“export” means to take tea out of Kenya to any place outside Kenya;

“green tea leaf” means leaf detached from tea plants but not dried or processed in any way;

“importer” means a person, a firm, or a corporate body engaged in the business of importing tea;

“licensee” means a person who holds a manufacturing license under section 17;

“management agent” means any person, co-operative society, marketing board or company established under any written law, that is appointed through a specific management contract or agreement by another person or company to perform or offer professional services in specific functions of production, processing or marketing of tea but does not include a buyer, broker or packer of tea;

“manufacturing license” means a manufacturing licence issued under section 16;

“packer” means any person who packs tea into packets or containers holding not more than ten kilograms of tea intended for sale;

“service provider” means any organization, business or individual that offers service to others with regards to processing, packing, or any other process of tea in exchange for payment;

“sun-drying” means the manufacture of green leaf into made tea by using direct heat of the sun;

“tea” means the plant known botanically as *Camellia Sinensis* and includes its seed, tea

plants and the leaf, whether on the plant or detached there from, and , in the latter case, whether green or manufactured tea;

“tea cess agent” means the agent appointed by the County by written instrument to be the collection agent for the tea cess;

“tea farmer” means a registered tea grower, registered to a tea factory under provisions prescribed by written National Laws and cultivating the tea crop or which intends to plant and cultivate tea in the County;

“tea grower” has the same meaning and description as Tea Farmer;

“tea factory” means a factory to process green tea leaf into made tea and licensed by the relevant authority under the Laws of the land to carry out that business;

“tea factory company” means a Company registered under the Company’s Act and which owns a tea factory that process tea leaves; and

“tea manufacture “means the mechanical or chemical processing and conversion of green tea leaf into made tea or other tea products.

PART II — ESTABLISHMENT OF THE THARAKA NITHI TEA ADVISORY COMMITTEE

Advisory committee

3. (1) There is established a committee to be known as the Tharaka Nithi county Tea advisory Committee.
- (2) The Committee shall advice the County Executive Member on—
 - (a) Strategies for ensuring growers attain the best productivity, grade and prices for tea;
 - (b) Adoption of alternative and green energy solutions for manufacture and processing of tea;

- (c) Refusal, revocation, cancellation, suspension or variation with or without conditions of any licenses or registration issued under the Crops Act with respect to tea;
- (d) Receive and consider application for licenses for production, manufacturing and marketing of tea;
- (e) Strategy for value addition of tea;
- (f) Recommend general industry agreements and certifications between tea farmers, managing agents, tea packers, brokers and manufactures;
- (g) Recommend special audits of licensees and manufacturers of tea;
- (h) Arbitration of disputes between factories and farmers;
- (i) Incentives to be offered to tea growers;
- (j) Formulation of the County Tea Development Plan; and
- (k) Establishment, maintenance and management of the green leaf tea collection centers.

Membership of the committee

4. (1) The Committee shall comprise of —
- (a) the county chief officer for the time being responsible for matters relating to agriculture;
 - (b) county director of agriculture;
 - (c) two members of board of directors each from Maara and Chuka constituency;
 - (d) a representative from the Tea Directorate of

Agriculture and Food Authority;

(e) a representative from the Tea Research Institute ; and

(f) the tea factory unit manager.

(2) The Chief Officer Agriculture shall be the chairperson and the tea factory unit manager will be the secretary to the committee.

County Tea
Development Plan.

5. (1) At the end of each financial year, the committee shall develop and send to the County Executive Member an annual county tea development plan indicating the programs and activities planned for tea and the county assembly shall approve the plan.

(2) When developing the plan under section 5 (1) the committee shall take views from the stakeholders.

(3) The development plan shall be submitted to the county assembly for approval not later than 31st January each year.

Conduct of the affairs
of the committee

6. (1) The business and the affairs of the committee shall be conducted in accordance with the schedule.

(2) Except as provided for in the schedule, the committee may regulate its own procedure.

(3) The committee may invite any person to attend its meetings but such person shall not be entitled to vote.

Bi-annual Report of
the committee

7. The committee shall, at the end of July and January each year, submit to the County Executive Member and the County Assembly a report on —

(a) Tea development progress reports;

(b) Earnings per factory; and

(c) Any other report that may be necessary.

Stakeholder's
Forum

8. The committee shall, within two months of submitting the report under section 7, have a stakeholder's forum with all the tea factories to discuss the report.

PART III — GROWING OF TEA

Registration of tea growers

9. (1) Any tea grower shall within six months of starting to grow tea, register with the tea factory to which he or she delivers or intends to deliver green leaf.

(2) Every tea factory shall maintain a register of tea growers supplying green leaf to the factory and the register shall include particulars and information required to be supplied under section 10.

(3) The register referred to in sub section (2) shall be *prima facie* proof that a person is a registered tea grower and the factory shall submit a copy of the register to the committee in such a manner as the committee may prescribe and the factory shall update its register after every six months and accordingly update the committee through a resolution of the factory board of directors.

Register of Factories registering growers.

10. Subject to this Act, the County Executive Member shall cause to be maintained a register of tea factories registering tea growers, and shall enter into the register—

(a) The full names of the tea factory;

(b) The date of issue of the license;

(c) The date of submission of annual returns of the registered growers by the tea factory;

(d) The particulars and number of registered growers including any updates which may be submitted from time to time; and

(e) Any other particulars and information that the committee may deem necessary.

PART IV — REGULATION OF TEA MANUFACTURERS AND DEALERS

Manufacturer,

11. (1) No person shall —

packer and blender
to have license

- (a) Manufacture tea for sale, whether by sun drying or otherwise; or
- (b) Carry on the business of packing and blending tea;

Without a license issued by the County Executive Member.

(2) The County Executive Member may make regulations prescribing—

- (a) The requirements for applying for a license under this section;
- (b) The procedure for processing applications for license;
- (c) The form of application for a license; and
- (d) The form of a license.

(3) The County Executive Member may, after ensuring that the applicant meets all the prescribed requirements, issue a manufacturing license, in accordance with regulations made under this section.

(4) The County Executive Member may, on advice of the committee vary or suspend any license issued under this section if the factory or license is found to have contravened the conditions of a license or regulations made under this Act for the operation of tea factories.

(5) A license issued under this section may authorize the holder to carry on all or any of the businesses referred to under subsection (1).

Register of
manufactures,
packers and
blenders.

12. (1) The County Executive Member shall cause to be maintained a register of all tea manufacturers, packers and blenders licenses under Section 11 in a form determined by the County Executive member.

(2) A register maintained under sub section (1) shall include—

- (a) The full names of the manufacturer, packers or blenders;
- (b) The date of issue of the license;
- (c) Particulars of any cancellation, suspension or variation of the license; and
- (d) Any other information or particular as the County Executive Member may deem necessary.

(3) All registered service providers shall furnish the Committee with their business model and shall justify their fees and charges to the farmer.

(4) All services provided by the said providers must demonstrate and prioritize the interest of the county tea farmer.

(5) For public interest, where a tea factory contracts an agent to manage it or any of its functions, the management agreement between the tea factory and the service providers shall be reviewed by the Advisory Committee and approved by the County Executive Member and such approval shall include the business model by each service provider.

(6) The service providers shall open county offices and provide personnel for operation of management functions.

Dealers in tea

13. (1) A person shall not deal in tea unless the County Executive Member registers that person.

(2) Any person who deals in tea in contravention of subsection (1) commits an offence.

Offences and penalties for illegally dealing in tea.

14. (1) Any Person who —
 (a) Manufactures, packs or blends tea for sale without a licensed issue under section 11;

(b) Buys, sells, exports for sale, transports or has in possession any tea which to his or her knowledge or belief—

(i) Has been grown, manufactured, dried or dealt with contrary to this Act;

(ii) Is from a tea grower who is not registered with any factory, or

(iii) Is from a tea grower who is not contracted to supply green leaf to a factory;

Commits an offence.

(2) Where a person has in possession or control any tea for which he or she is unable to account for to the satisfaction of a person authorized under section 11, such tea shall be deemed to have been grown, manufactured, dried or dealt with contrary to this Act until otherwise proved.

(3) Where a person is convicted of an offence under this section the court may, in addition to the punishment given under the section 25, order that any tea and the vehicle, vessel or any other conveyance in relation to the offence be forfeited to the County Government.

(4) This section shall not apply to buyers of tea in Good faith.

Entry and inspection

15. (1) Any person authorized in writing by the County Executive Member may, at all reasonable times and upon giving sufficient notice, enter any land or buildings occupied by the holder of a manufacturing, packing or blending license issued

under section 11 or a person registered under this Act and make inspection and enquiries as he or she may think fit for ascertaining whether—

- (a) The provisions of this Act, or any regulations made there under; or
- (b) The terms and conditions of the respective registration or license are being complied with;
- (c) And may require any person found thereon to give the information required.

(2) Any person who hinders or obstructs a person exercising or attempting to exercise the powers conferred upon him or her under subsection (1) or who fails to give any information reasonably required, to the best of his or her knowledge and ability commits an offence.

Powers of search and seizure

16.(1) An officer of the county government or the committee authorized in writing by the County Executive Member, upon issuing sufficient notice as the case may be upon production of his or her authority on demand, and any police officer or administration police officer may —

- (a) Enter and search any premises upon which he or she has reason to believe that there is tea in respect of which an offence under section 12 is being or has been committed;
- (b) Stop, search and detain any vehicle, vessel or other conveyance which he or she has reason to believe is being or has been used for conveyance of tea in respect of which an offence under section 12 is being or has been committed.

(2) Any person who or obstructs a person acting in

the exercise of his or her powers under this section commits an offence.

PART V—TEA CESS

Tea Cess

17. (1) The County shall levy a Cess known as a County Tea Cess, replacing the Agricultural Produce Cess established in the repealed National Agricultural Act, Cap. 343, Laws of Kenya.

(2) The County Tea Cess shall be deducted from the green leaf proceeds of each grower registered to a Tea Factory.

(3) The Tea Cess shall be utilized as for purposes provided under this Act.

(4) The Tea Cess shall be collected by the Tea Factory or the Tea Factory's appointed agent(s) that a tea farmer or teagrower is registered to on behalf of the County Government.

(5) Utilization of the Tea Cess in any manner other than would be prescribed or permitted under this Act or other written Law, shall constitute an offence.

(6) The Tea Cess shall be determined annually by the Committees in consultation with County Executive Member for Finance and County Executive Member for Agriculture and approved by the County Executive Committee; and shall not exceed 1% of the green leaf payment.

Purpose of TeaCess

18. (1) The primary purpose of the Tea Cess would be to ensure that the infrastructure of the tea growing areas, including but not limited to access roads, bridges and other public utilities are in repairable condition for the tea produce to reach the tea factory and from the factory and from the factory to the tea markets.

(2) Tea Cess may, however, be used for any other lawful purpose as would be decided by the Committees set up herein in consultation with the

County Executive Member responsible for Finance.

(3) Provided that such other purpose would be for the benefit of the tea farmer in general and if the County Government using other resources would have addressed or managed the infrastructure mentioned in sub-section (1) above.

Establishment and
Composition of the
Tea Cess
Committee

19. (1) There is established a committee to be known as the Tharaka Nithi county Tea Cess Committee.

(2) The Committee shall comprise of —

(a) the county chief officer for the time being responsible for matters relating to agriculture;

(b) two members of board of directors each from Maara and Chuka constituency;

(c) the county chief officer for the time being responsible for matters relating to roads and infrastructure;

(d) the county chief officer for the time being responsible for matters relating to finance;

(e) the factory field service manger; and

(f) the factory unit manager.

(2) The Chief Officer Agriculture shall be the chairperson and the factory manager will be the secretary to the committee.

(3) The County Committee Members shall appoint a Vice chairperson from amongst the members and who will deputize the Chairperson in their absence.

Functions of the
committee

20. The functions of the committee are—

(a) to advise the County Executive Committee member on collection of

the Tea Cess;

(b) to manage the collection and utilization of the Cess;

(c) to deliberate on the projects to which the Tea Cess funds will be applied, as stipulated in this Act; and

(d) Any other functions assigned by the County Executive Members in relation to this Act.

Conducts of meetings

21. (1) The Committee shall sit at least four times and not more than six times a year and shall cause minutes and record of deliberations.

(2) Meetings of the Committee shall be held within the county.

Quorum Meetings of

22. The quorum of the committee shall be two thirds of the membership.

Sitting Allowance

23. The members of the Committee shall be entitled to a sitting allowance as provided by the Salaries and Remuneration Commission Guidelines.

Records

24. The Committee shall cause to be published an audited annual report itemizing the usage of the Tea Cess funds and such report will be tabled before the County Assembly.

PART VI— MISCELLANEOUS PROVISIONS

General offence and penalty.

25. A person convicted of an offence under this Act in respect of which no penalty is provided shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding two years or both.

Offences Corporations, societies, etc. by

26. Where any offence under this Act or under any regulations made under this Act is committed by a company, body corporate, society, association,

or body of persons, every person charged with the control or management of the affairs, or activities of that body shall be deemed to have committed offence and is liable on conviction to the relevant punishment accordingly, unless it is proved by such a person that, through no act or omission on their part they were not aware that the offence was being or was intended or about to be committed, or that they took all reasonable steps to prevent its commission.

Regulations

27. The County Executive Member may after consulting with the Committees make regulations for carrying this Act into effect.

Existing Licenses

No. 16 of 2013

28. Every license issued under the Crops Act, 2013 and in force immediately before the commencement of this Act shall, continue in full force and effect according to the terms and conditions thereof, as if the same had been issued under this Act.

Conflict of Interest

29. (1) A member of the Advisory Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the committee shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of the interest to the committee.

(2) A disclosure of any such interest in a matter shall be recorded in the minutes of the meeting of the Advisory Committee and the member shall not be present when that matter is being dealt with by the Committee and shall not take part in any deliberations or vote relating to the matter.

(3) No member of the Advisory Committee including his or her family members shall transact any business or trade with the Committee.

Proceedings of the
advisory committee
meetings

SCHEDULES

- (1) The quorum of the committee shall be two thirds of the membership.
- (2) The chair person may at any time call a special meeting of the Committee, and shall call a special meeting within seven Days after a requisition therefore addressed to him by any three members of the Committee.
- (3) The Chairperson, or in the absence the vice chair person, or in the absence a member elected by the Committee shall preside at all meetings of the committee and person presiding at any meeting shall with respect to such meeting or any business transacted there at have all powers of the chairperson under this Act.
- (4) The quorum for the conduct of the business of the Committee shall be two thirds of the members.

- (5) The chairperson, or other person presiding at any meeting shall have a casting vote as well as a deliberative vote, and subject thereto the decision of the majority of the members present and voting at any meeting of the committee shall be deemed to be the decision of the Committee.
- (6) Minutes in proper form of each meeting shall be kept by the secretary and shall be confirmed by the chairperson or other person presiding at the next succeeding meeting.
- (7) Subject to this section, the Committee shall have power to regulate its own proceedings, and may delegate to any member or committee of members the power and authority to carry out on behalf of the committee such duties as it may determine.

MEMORANDUM OF OBJECTS AND REASONS

The objective of this bill is to provide for the growing of tea and the development and regulation of the tea industry and for other connected purposes.

PART I of the bill contains preliminary provisions that include the short title and interpretation of the bill.

PART II provides for the establishment of the Tharaka Nithi County tea Advisory Committee, the membership of the advisory committee, prescribes for the County Tea Development Plan the conduct of the affairs of the committee, Bi annual reports of the committee and the stakeholders' forum.

PART III provides for the registration of tea growers and register of factories registering growers.

PART IV Deals with the dealers, manufacturer, packer and blender to have licenses and describes the offences and prescribes the penalties for illegally dealing in tea.

This part provides for the entry and inspection of any land or building

occupied by a license holder and prescribes the powers of search and seizure.

PART V provides for tea cess, purpose of tea cess, establishment and composition of tea cess committee, functions of the committee, conduct of business of the committee and quorum for the meetings of the committee.

PART VI Provides for miscellaneous provisions relating to general offences and penalties, offences by Corporations, Societies etc and regulations for carrying this bill into effect.

Further, it provides for the existing licenses issued under the Crops Act 2013 (Act no. 16 of 2013) and provides for the period of registration.

Also, it provides for conflict of interest by a member of the advisory committee and protection from personal liability of a member of the advisory committee.

Hon. John Mucee Njagi
Chairperson Agriculture , livestock and fisheries Committee.